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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/236,897	01/26/1999	AKIHIRO KOMATSU	Q53086	9842

7590 03/12/2003
SUGHRUE MION ZINN MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE N W
WASHINGTON, DC 200373202

EXAMINER

CROSS, LATOYA I

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/236,897	KOMATSU, AKIHIRO	
Examiner	Art Unit	
LaToya I. Cross	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 8-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Interview Summary

Application No.

09/236,897

Applicant(s)

KOMATSU, AKIHIRO

Examiner

LaToya I. Cross

Art Unit

1743

All participants (applicant, applicant's representative, PTO personnel):

(1) LaToya I. Cross.

(3) _____.

(2) Jeff Schmidt.

(4) _____.

Date of Interview: 12 February 2003.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.

If Yes, brief description: _____.

Claim(s) discussed: _____.

Identification of prior art discussed: _____.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Att. Schmidt noted that the Advisory Action mailed on 1-7-03 make reference to two patents pertinent to the claimed invention, which had not formally been used in a rejection. The attached Office Action formally make the reference patent of record. The Action is Non-Final to allow Applicants opportunity to respond.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) ☒ It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

DETAILED ACTION

This Office Action is in response to Applicant's After-Final amendment filed on October 31, 2002 as Paper No. 14.

Withdrawal of Rejections from Previous Office Action

- The rejection of claims 1, 2, 4-6 and 8-20 under 35 USC 103 over Smith et al in view of Komatsu and Quenin et al is withdrawn in view of Applicants' argument that neither reference teaches an incubator capable of holding different temperatures for each of the analysis slides.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-6 and 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,296,069 to Smith et al in view of US Patent 6,296,809 to Richards et al.

Smith et al '069 disclose an apparatus for processing analysis slides in a chemical analyzer. The apparatus comprises a meter device 18 for metering (spotting) sample fluid from sample cups on a sample tray onto an analysis slide of the colorimetric type. A second meter device is provided to deposit sample and reference fluid onto analysis slides of the potentiometer type (col. 3, lines 40-45). Incubators 22, 24 are provided to function with analysis means 23, 25 from measuring a change in the analysis slides as a result of the fluid being deposited thereon (col. 4, lines 40-45). Results from the analysis means 25 may be

Art Unit: 1743

transmitted to a computer for appropriate calculations of concentration for various samples (col. 7, lines 53-58). Control circuits are provided which include thermistors for controlling the temperature of various heating elements (col. 4, lines 28-37). Also disclosed are housings 14, 16 where analysis slides are supplied and moved between the incubator 24 and analysis means 25, via a slide transfer mechanism 128. The position of the analysis slide is detected by means of an optical sensor (col. 6, lines 33-36). Also taught by Smith et al is the additional use of an ion activity measuring means comprising electrodes selective to ion activity (col. 3, lines 12-15).

Smith fails to teach 1) a single incubator for maintaining a constant temperature for the analysis slides, wherein the incubator may simultaneously maintain different temperatures for different slides and 2) detection of the position of the analysis slides by way of a bar code reader on the slides.

With respect to the use of an incubator capable of simultaneously maintaining different temperatures for different slides, Richards et al teach an apparatus having independent slide heaters. The apparatus allows multiple analysis slides 37 to be heated to different temperatures at particular points in time. This is accomplished by making the slides thermally isolated from one another such that heat from one heater has no appreciable affect on the temperature of adjacent slides (col. 7, lines 19-49). It would have been obvious to one of ordinary skill in the art to use an incubator capable of allowing different heating temperatures for different slides because such would more accurately provide individual slide temperatures to conduct analysis of the slides at varying temperatures in one apparatus rather than having to use multiple apparatuses where different slide temperatures are necessary in carrying out the analysis.

With respect to the use of a bar code on the analysis slides, Richards et al further teach that each of the slide have bar codes on them to permit the computer controlled positioning of

Art Unit: 1743

the dispensers and slides so that different reagent treatments can be performed for each of the various tissue samples by appropriate programming of the computer (col. 3, lines 41-56 and col. 16, lines 21-24). It would have been obvious to one of ordinary skill in the art to use a bar code to determine the position of the slides in Smith et al '069 because this provide a manner of determining other useful information, such as type, about the slide and keeping track, by way of computer data, of the analyses taking place in the automatic system.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103, in view of the teachings of Smith et al in view of Richards et al.

3. Applicant's arguments with respect to the instant claims have been considered but are moot in view of the new ground(s) of rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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February 25, 2003


Jill Warden
Supervisory Patent Examiner
Technology Center 1700